Supreme Court, U.S.
FILED
FEB 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1058

In The

Supreme Court of the United States

October Term, 1988

WILLIAM D. TREEBY AND
STATE FARM FIRE AND CASUALTY COMPANY,

Petitioners,

vs.

DAVID V. ADLER, TRUSTEE IN BANKRUPTCY, *IN THE MATTER OF MARVIN E. GORMAN AND VIRGINIA A. GORMAN, CASE NO. 04024* AND *IN THE MATTER OF MARVIN GORMAN MINISTRIES, INC., FORMERLY WHO CARES MINISTRIES, INC., CASE NO. 04025-K,*

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

PETITIONERS' REPLY BRIEF

E. Ross Buckley, Jr.
Michele D. Ahlers
Blue, Williams & Buckley
3421 N. Causeway Boulevard
Suite 901
Metairie, Louisiana 70002
(504) 831-4091

Counsel of Record for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

16 pp

TABLE OF CONTENTS

	Page(s)
CONSTITUTIONAL AND STATUTORY PROVISIONS	ii
PETITIONERS' REPLY BRIEF	1
ARGUMENT	2
CONCLUSION	3

PETITIONERS' REPLY BRIEF

William D. Treeby and State Farm Fire and Casualty Company respectfully submit this reply brief directed to respondents' request that this Court enter sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure against petitioners herein.

———o———

ARGUMENT

In respondents' conclusion at pages 10 and 11 of the Brief in Opposition, there is a request for the Supreme Court to sanction petitioners under Rule 11 of the Federal Rules of Civil Procedure. Petitioners, herein, urge this court to exclude any consideration of this request for Rule 11 sanctions. The reasons for petitioners' request are set forth below.

(1) The United States Supreme Court has no original jurisdiction over a Motion for Contempt and/or for Sanctions. The United States Constitution, Article 3, Subsections 1 and 2; 28 U.S.C.A. Sub-section 1251; United States Supreme Court Rules 9, 17, 19, 26, and 27.

(2) There has been no final judgment by any court of the State of Louisiana regarding the Motion for Contempt and/or for Sanctions appended to respondents' brief in opposition. Therefore, the United States Supreme Court has no appellate jurisdiction over this matter. 28 U.S.C.A. Sub-section 1257.

(3) Respondents' brief is not a proper procedural device for raising this issue. United States Supreme Court Rules 9, 17, 19, 26 and 27.

(4) Federal Rule of Civil Procedure 11 is not a rule of the United States Supreme Court. It is a rule of the United States District Courts. This litigation was brought in the Civil District Court for the Parish of Orleans, a state court, and was not removed to the United States District Court for the Eastern District of Louisiana. Therefore, the Federal Rules of Civil Procedure do not apply to respondents' motion for contempt and/or for sanctions. United States Constitution Article 3, Sub-sections 1 and 2; 28 U.S.C.A. Sub-sections 1251 and 1257; United States Supreme Court Rules 9, 17, 19, 26, and 27.

—o—

CONCLUSION

From the above, it is clear that respondents' attempt to seek sanctions in the United States Supreme Court is improper. Federal Rule of Civil Procedure 11 does not apply. Moreover, this court does not currently have jurisdiction over the purported issues raised in the motions for contempt and/or for sanctions filed in the Civil District Court for the Parish of Orleans. Therefore, this court should not consider any argument by respondents' advocating sanctions and all reference thereto should be treated as if these allegations had been stricken from the text of their brief in opposition.

Respectfully submitted,

E. Ross Buckley, Jr.
Michele D. Ahlers
Blue, Williams & Buckley
3421 N. Causeway Boulevard
Suite 901
Metairie, Louisiana 70002
(504) 831-4091

Counsel of Record for Petitioners

APPENDIX

CONSTITUTION OF THE UNITED STATES
ART. 3 §§ 1 & 2
ARTICLE III

§ 1. Judicial power; tenure of office

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavious, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

§ 2. Jurisdiction

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State;— between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction.

In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

§ 1251. Original jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(1) All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties;

(2) All controversies between the United States and a State;

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

(As amended Sept. 30, 1978, Pub.L. 95-393, § 8(b), 92 Stat. 810.)

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(As amended July 29, 1970, Pub.L. 91P-358, Title I, § 172-(a)(1), 84 Stat. 590.)

PART III—ORIGINAL JURISDICTION

Rule 9. Procedure in original actions

.1. This Rule applies only to actions within the Court's original jurisdiction under Article III of the Constitution of the United States. Original applications for writs in aid of the Court's appellate jurisdiction are governed by Part VII of these Rules.

.2. The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure and in other respects those Rules,

where their application is appropriate, may be taken as a guide to procedure in original actions in this Court.

.3. The initial pleading in any original action shall be prefaced by a motion for leave to file such pleading, and both shall be printed in conformity with Rule 33. A brief in support of the motion for leave to file, which shall comply with Rule 33, may be filed with the motion and pleading. Sixty copies of each document, with proof of service as prescribed by Rule 28, are required, except that, when an adverse party is a State, service shall be made on the Governor and Attorney General of such State. See Rule 28.1.

.4. The case will be placed upon the original docket when the motion for leave to file is filed with the Clerk. The docket fee must be paid at that time, and the appearance of counsel for the plaintiff entered.

.5. Within 60 days after receipt of the motion for leave to file and allied documents, any adverse party may file, with proof of service as prescribed by Rule 28, 60 printed copies of a brief in opposition to such motion. The brief shall conform to Rule 33. When such brief in opposition has been filed, or when the time within which it may be filed has expired, the motion, pleading, and briefs will be distributed to the Court by the Clerk. The Court may thereafter grant or deny the motion, set it down for argument, or take other appropriate action.

.6. Additional pleadings may be filed, and subsequent proceedings had, as the Court may direct. See Rule 28.1.

.7. A summons issuing out of this Court in any original action shall be served on the defendant 60 days before

the return day set out therein; and if the defendant, on such service, shall not respond by the return day, the plaintiff shall be at liberty to proceed *ex parte.*

.8. Any process against a State issued from the Court in an original action shall be served on the Governor and Attorney General of such State.
(As amended Oct. 21, 1980, eff. Nov. 21, 1980.)

PART V—JURISDICTION ON WRIT OF CERTIORARI

Rule 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal

law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of of[1] the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

(As amended July 5, 1984, eff. Aug. 1, 1984.)

Rule 19. Review on certiorari—how sought—parties

.1. A party intending to file a petition for certiorari, prior to filing the case in this Court or at any time prior to action by this Court on the petition may request the clerk of the court possessed of the record to certify it, or any part if it, and to provide for its transmission to this Court, but the filing of the record in this Court is not a requisite for docketing the petition. If the petitioner has not done so, the respondent may request such clerk to certify and transmit the record or any part of it. Thereafter, the Clerk of this Court or any party to the case may request that additional parts of the record be certified and transmitted to this Court. Copies of all requests for certification and transmission shall be sent to all parties to the proceeding. Such requests to certify the record prior to action by the Court on the petition for certiorari, however, should not be made as a matter of course but only when the record is deemed essential to a proper understanding of the case by this Court.

---

[1]So in original.

.2. When requested to certify and transmit the record, or any part of it, the clerk of the court possessed of the record shall number the documents to be certified and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. If the record, or stipulated portions thereof, has been printed for the use of the court below, such printed record plus the proceedings in the court below may be certified as the record unless one of the parties or the Clerk of this Court otherwise requests. The provisions of Rule 13.3 with respect to original papers shall apply to all cases sought to be reviewed on writ of certiorari.

.3. Counsel for the petitioner shall enter an appearance, pay the docket fee, and file, with proof of service as provided by Rule 28, 40 copies of a petition which shall comply in all respects with Rule 21. The case then will be placed on the docket. It shall be the duty of counsel for the petitioner to notify all respondents, on a form supplied by the Clerk, of the date of filing and of the docket number of the case. Such notice shall be served as required by Rule 28.

.4. Parties interested jointly, severally, or otherwise in a judgment may join in a petition for a writ of certiorari therefrom; or any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari to the same court and involve identical or closely related questions, it will suffice to file a single petition for writ of certiorari covering all the cases.

.5. Not more than 30 days after receipt of the petition for certiorari, counsel for a respondent wishing to file a

cross-petition that would otherwise be untimely shall enter an appearance, pay the docket fee, and file, with proof of service as prescribed by Rule 28, 40 copies of a cross-petition for certiorari, which shall comply in all respects with Rule 21. The cross-petition will then be placed on the docket subject, however, to the provisions of Rule 20.5. It shall be the duty of counsel for the cross-petitioner to notify the cross-respondent on a form supplied by the Clerk of the date of docketing and of the docket number of the cross-petition. Such notice shall be served as required by Rule 28. A cross-petition for certiorari may not be joined with any other pleading. The Clerk shall not accept any pleadings so joined. The time for filing a cross-petition may not be extended.

.6. All parties to the proceeding in the court whose judgment is sought to be reviewed shall be deemed parties in this Court, unless the petitioner shall notify the Clerk of this Court in writing of petitioner's belief that one or more of the parties below has no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below and a party noted as no longer interested may remain a party here by notifying the Clerk, with service on the other parties, that he has an interest in the petition. All parties other than petitioners shall be respondents, but any respondent who supports the position of a petitioner shall meet the time schedule for filing papers which is provided for that petitioner, except that any response by such respondent to the petition shall be filed within 20 days after receipt of the petition. The time for filing such response may not be extended.

PART VII—JURISDICITION TO ISSUE EXTRAORDINARY WRITS

Rule 26. Considerations governing issuance of extraordinary writs

The issuance by the Court of any extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any writ under that provision, it must be shown that the writ will be in aid of the Court's appellate jurisdiction, that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers, and that adequate relief cannot be had in any other form or from any other court.

Rule 27. Procedure in seeking an extraordinary writ

.1. The petition in any proceeding seeking the issuance by this Court of a writ authorized by 28 U.S.C. §§ 1651(a), 2241, or 2254(a), shall comply in all respects with Rule 33, except that a party proceeding *in forma pauperis* may proceed in the manner provided in Rule 46. The petition shall be captioned "In re (name of petitioner)." All contentions in support of the petition shall be included in the petition. The case will be placed upon the docket when 40 copies, with proof of service as prescribed by Rule 28 (subject to paragraph .3(b) of this Rule), are filed with the Clerk and the docket fee is paid. The appearance of counsel for the petitioner must be entered at this time. The petition shall be as short as possible, and in any event may not exceed 30 pages.

.2 (a) if the petition seeks issuance of a writ of prohibition, a writ of mandamus, or both in the alternative, it

shall identify by names and office or function all persons against whom relief is sought and shall set forth with particularity why the relief sought is not available in any other court. There shall be appended to such petition a copy of the judgment or order in respect of which the writ is sought, including a copy of any opinion rendered in that connection, and such other papers as may be essential to an understanding of the petition.

(b) The petition shall follow, insofar as applicable, the form for the petition for writ of certiorari prescribed by Rule 21. The petition shall be served on the judge or judges to whom the writ is sought to be directed, and shall also be served on every other party to the proceeding in respect of which relief is desired. The judge or judges, and the other parties, within 30 days after receipt of the petition, may file 40 copies of a brief or briefs in opposition thereto, which shall comply fully with Rules 22.1 and 22.2, including the 30-page limit. If the judge or judges concerned do not desire to respond to the petition, they shall so advise the Clerk and all parties by letter. All persons served pursuant to this paragraph shall be deemed respondents for all purposes in the proceedings in this Court.

.3 (a) If the petition seeks issuance of a writ of habeas corpus, it shall comply with the requirements of 28 U.S.C. § 2242 and in particular with the requirement in the last paragraph there of that it state the reasons for not making application to the district court of the district in which the petitioner is held. If the relief sought is from the judgment of a state court, the petition shall set forth specifically how and wherein the petitioner has exhausted his remedies in the state courts or otherwise comes within the

provisions of 28 U.S.C. §2254(b). To justify the granting of a writ of habeas corpus, it must be shown that there are present exceptional circumstances warranting the exercise of the Court's discretionary powers and that adequate relief cannot be had in any other form or from any other court. Such writs are rarely granted.

(b) Proceedings under this paragraph .3 will be *ex parte,* unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. If a response is ordered, it shall comply fully with Rules 22.1 and 22.2, including the 30-page limit. Neither denial of the petition, without more, nor an order of transfer under authority of 28 U.S.C. § 2241(b), is an adjudication on the merits, and the former action is to be taken as without prejudice to a further application to any other court for the relief sought.

.4. If the petition seeks issuance of a common-law writ of certiorari under 28 U.S.C. § 1651(a), there may also be filed, at the time of docketing, a certified copy of the record, including all proceedings in the court to which the writ is sought to be directed. However, the filing of such record is not required. The petition shall follow, insofar as applicable, the form for a petition of certiorari prescribed by Rule 21, and shall set forth with particularity why the relief sought is not available in any other court, or cannot be had through other appellate process. The respondent, within 30 days after receipt of the petition, may file 40 copies of a brief in opposition, which shall comply fully with Rules 22.1 and 22.2, including the 30-page limit.

.5. When a brief in opposition under paragraphs .2 and .4 has been filed, or when a response under paragraph .3 has been ordered and filed, or when the time within which it may be filed has expired, or upon an express waiver of the right to file, the papers will be distributed to the Court by the Clerk.

.6. If the Court orders the cause set down for argument, the Clerk will notify the parties whether additional briefs are required, when they must be filed, and, if the case involves a petition for common-law certiorari, that the parties shall proceed to print a joint appendix pursuant to Rule 30.